United Nations CEDAW/C/57/D/39/2012

Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
12 March 2014

Original: English

Committee on the Elimination of Discrimination against Women
Fifty-seventh session
10-28 February 2014

Communication No. 39/2012

Decision adopted by the Committee at its fifty-seventh session, 10-28 February 2014

Submitted by:	N. (represented by counsel, Ilse van Kuilenburg)
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	16 February 2012 (initial submission)
References:	Transmitted to the State party on 28 February 2012 (not issued in document form)
Date of adoption of decision:	17 February 2014

14-26326 (E) 250314

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Annex

Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (fifty-seventh session)

Communication No. 39/2012, *N. v. the Netherlands**

Submitted by:	N. (represented by counsel, Ilse van Kuilenburg)
Alleged victim:	The author
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The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 17 February 2014,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is N., a Mongolian citizen, born on 10 June 1987. She sought asylum in the Netherlands; her application was rejected and, at the time of submission of the communication, she was awaiting deportation to Mongolia. She claims that the denial of her asylum application constitutes a violation by the Netherlands of articles 1, 2 (e), 3 and 6 of the Convention on the Elimination of All Forms of Discrimination against Women. The author is represented by counsel. The Convention and the Optional Protocol thereto entered into force for the State party on 22 August 1991 and 22 August 2002, respectively.

1.2 On 28 February 2012, the Committee decided not to accede to the author's request for interim measures submitted on 16 February 2012.

Facts as presented by the author

2.1 The author is an unmarried woman. She grew up as an orphan in Darkhan, Mongolia, and her only family member, a brother, has been incarcerated since May 2004. She has a son, G.

2.2 In August 2007, when the author was 20 years old, she began working for Mr. L. in his hotel in Ulaanbaatar. Because the hotel was frequented by influential people in

* The following members of the Committee participated in the examination of the present communication: Ayse Feride Acar, Olinda Bareiro-Bobadilla, Niklas Bruun, Náela Gabr, Hilary Gbedemah, Ruth Halperin-Kaddari, Yoko Hayashi, Ismat Jahan, Dalia Leinarte, Violeta Neubauer, Theodora Nwankwo, Pramila Patten, Silvia Pimentel, Maria Helena Pires, Biancamaria Pomeranzi, Patricia Schulz and Xiaoqiao Zou.

Mongolia, such as ministers, bankers and parliamentarians, Mr. L. had good connections. In October 2008, the author also began to work at Mr. L.'s home as a housekeeper to add to her income with a view to finishing her education and buying a house.

2.3 In December 2008, Mr. L. raped the author and she became pregnant with her son, G. Two days after the incident, a colleague, N., suggested that she should report the rape to the police. The author went to a police station in Ulaanbaatar and filed charges against Mr. L. Three or four days later, the police came to the hotel and took Mr. L. for questioning. Mr. L. was released 72 hours later. He returned to the hotel and told the author that she could not do anything to him because he had money and connections. He also reminded her that he was in possession of her passport, birth certificate and diploma.

2.4 Mr. L. forced the author to return to his house. She was no longer allowed to work at the hotel. Mr. L. locked her in a small room in his house. While the author was pregnant, he abused her regularly, both sexually and physically. One day, he beat her, tied her up and attacked her with scissors, a knife and a fork.

2.5 Two months later, when Mr. L. omitted to lock her door, the author was able to escape and made a complaint at a police station. The police took pictures of her injuries and recorded her statements. Given that she had nowhere to go, she returned to Mr. L.'s house. Later that evening, Mr. L. told her that the police had contacted him and that he had bribed them, meaning that they would do nothing to protect her. He then hit her again.

2.6 At the end of February 2009, the author managed to escape from Mr. L.'s house again. She sought help from her former colleague, N., who took her to a family house in a small Mongolian town, B. The author spent two months there. In March 2009, two men forcibly removed her from the house and returned her to Mr. L.

2.7 A few days later, the author managed to escape from Mr. L.'s house. Her former colleague, N., brought her to K., a small provincial Mongolian town. The author spent a month there. At the end of March 2009, two men arrived and forced her to return to Mr. L., who abused her again.

2.8 When the author's pregnancy began to show, Mr. L. forced her to take pills to induce miscarriage. Because that did not work, he beat her in an attempt to induce miscarriage. One night, the author escaped from Mr. L.'s house again. She then roamed the streets of Ulaanbaatar for four or five days because she had nowhere to stay. Eventually, she contacted Ms. B., a smuggler, who helped her to flee to the Netherlands.

2.9 In June 2009, she arrived in the Netherlands. On 25 August 2009, she officially sought asylum. After several hearings and medical tests, the Immigration and Naturalization Service notified her, on 25 January 2011, of its intention to reject her request. According to the author, the Service found her statements credible but did not believe that the Government of Mongolia was unwilling or unable to protect her. On 24 February 2011, she submitted additional arguments in support of her asylum request, emphasizing the situation of women in Mongolia and the structural failure of the State to protect them. On 1 March 2011, the Service denied her asylum request, finding no reason to expect that the Mongolian authorities would be unable to provide her with effective protection.

2.10 On 26 March 2011, the author complained about the decision of the Immigration and Naturalization Service to the Almelo District Court. On 16 August 2011, the District Court rejected her appeal on the same grounds as the Service. On 13 September 2011, the author lodged an appeal with the Administrative Jurisdiction Division of the Council of State.[1] On 1 November 2011, the Council rejected the appeal without further comments on the merits of the case.

2.11 The author submits that, given the information about the systemic failure of Mongolia to protect women subjected to discrimination and domestic violence, there were and would be no remedies available to her in Mongolia. She explains that the Mongolian authorities are tainted by corruption and that there is no effective and accessible legal system in Mongolia. She contends that her two complaints to the police prompted no action by the authorities. She further argues that the State party should have investigated whether the Mongolian authorities were in a position to provide effective protection, in particular by examining all available information about the situation in Mongolia and applying it to her individual circumstances in the asylum proceedings. In support of her arguments, she refers to cases heard by the European Court of Human Rights: *H.L.R. v. France* (application No. 24573/94, judgement of 29 April 1997)[2] and *NA. v. the United Kingdom* (application No. 25904/07, judgement of 17 July 2008).[3] She also emphasizes the incorporation into the State party's refugee legislation of article 7 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.[4]

Complaint

3.1 The author claims a violation of articles 1, 2 (e), 3 and 6 of the Convention. In particular, she submits that she was subjected to violence, sexual slavery and physical abuse because she is a woman. She refers to the Committee's general recommendation No. 19, according to which gender-based violence falls within the scope of article 1 of the Convention. The author claims that, because the Convention applies to all women on the territory of the State, it also applies to women from third countries seeking asylum. The State has the obligation to protect such women against discrimination in their countries of origin and to offer them permission to stay whenever necessary. She adds that the Mongolian authorities are reluctant to

[1] The highest administrative court in the Netherlands.

[2] The author does not refer to any particular paragraph or argue why this case is relevant.

[3] The author refers to paragraph 142 of the judgement, in which the Court underlined that, when assessing the applicant's claim to be at real risk of ill-treatment in case of forcible return to Sri Lanka, it would need, first, to have due regard for the deterioration of the security situation there and the corresponding increase in general violence and heightened security; and, second, to take a cumulative approach to all possible risk factors identified by the applicant.

[4] Article 7 reads:

1. Protection can be provided by:
   (a) the State; or
   (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.
2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

prevent, investigate or sanction abuses against women, which are common but considered to be an internal family matter.

3.2 The author further submits that, by denying her asylum request, the State party has failed to protect her and, in particular, to take all appropriate measures to eliminate discrimination against women by any person, to guarantee her the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men and to protect her from exploitation, in violation of articles 2, 3 and 6 of the Convention.

State party's observations on admissibility and merits

4.1 On 23 August 2012, the State party submitted its observations on admissibility and merits. It reiterates the facts of the case and clarifies the asylum proceedings pursued by the author. In particular, it states that the author reported to the authorities of the Netherlands on 22 June 2009 and subsequently applied for a temporary asylum residence permit. On 25 August 2009, an interview was conducted in her asylum case. The author was questioned as to her identity, nationality, civil status, family, documents, date of departure from her country of origin and travel itinerary. She was provided with an interpreter. A report of the interview was drafted. On 24 February 2010, the author submitted her comments on the interview report. On 19 March 2010, the State party notified her of its intention to deny her application. On 23 April 2010, the author challenged that intention and submitted additional arguments on 27 April and 10 May 2010. On 17 August 2010, she was interviewed regarding her reasons for seeking asylum and an interview report was drawn up. On 3 November 2010, the Medical Assessment Section of the Immigration and Naturalization Service issued a report in which it stated that the author was receiving medical treatment[5] that, if interrupted at short notice, would not result in a medical emergency. A copy of the report was sent to the author. On 15 November 2010, the State party notified the author of its intention to deny her leave to remain in the country on medical grounds under section 64 of the Aliens Act (2000).[6] On 25 January 2011, the State party reiterated its intention to deny the author's application for temporary asylum, which she challenged on 24 February 2011, emphasizing her eligibility therefor. On 28 February 2011, the author's application for a temporary asylum residence permit was denied. On 26 March 2011, the author applied to The Hague District Court for a review of the latter decision and submitted grounds for review on 21 July 2011. On 2 August 2011, the Almelo District Court heard the author's case in the presence of the author and her counsel. On 16 August 2011, the District Court denied her application for review as unsubstantiated. On 13 September 2011, the author appealed against that decision. On 1 November 2011, the Administrative Jurisdiction Division of the Council of State upheld the District Court's decision.

4.2 The State party challenges the admissibility of the case. In particular, it argues that the communication is inadmissible *ratione materiae*. It notes that the author was allegedly subjected to sexual violence in Mongolia, which is itself a State party

[5] The author did not mention that she was undergoing medical treatment in her submissions to the Committee.

[6] According to section 64 of the Aliens Act (2000), an alien shall not be expelled as long as his or his family members' health condition makes it unadvisable for him to travel.

to the Convention.[7] The author does not argue that the alleged violation of her rights under the Convention in Mongolia is attributable to the State party. If the author considered that the Mongolian authorities had failed to protect her, she should have lodged a complaint against Mongolia.

4.3 To the extent that the author complains that the State party failed to meet its obligations under the Convention by denying her a residence permit, notwithstanding the treatment to which she was subjected in Mongolia, the State party submits that it cannot be held liable for a violation, real or alleged, of the Convention by another State party.[8] The Committee therefore lacks jurisdiction over the alleged violations with regard to the Netherlands.[9] Furthermore, the Convention should not be interpreted as encompassing the legal obligation of States parties against removal for threats of torture or other serious threats to life and the security of the person (non-refoulement principle), to avoid overlapping with other international and European instruments.[10]

4.4 The State party further argues that the communication is inadmissible for failure to exhaust domestic remedies. It submits that the author failed to raise any allegation of sex-based discrimination or refer to the Convention in the course of the asylum proceedings before the authorities or courts of the Netherlands. The central question of those proceedings was whether her removal would constitute a breach of the non-refoulement principle by the State party. Consequently, the national authorities and courts had no opportunity to deal with the author's allegations regarding sex-based discrimination and to remedy the alleged violation before it was brought before the Committee. The State party acknowledges that, whereas the author might not have to refer to specific provisions of the Convention in the domestic proceedings, she must have raised the complaint regarding the alleged discrimination in substance.[11]

4.5 With regard to the merits of the author's communication, the State party submits that the obligation to protect stemming from the Convention with regard to granting asylum to women is no more far-reaching than the obligations arising from the 1951 Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Protection afforded by

[7] Mongolia has ratified both the Convention (20 July 1981) and the Optional Protocol (28 March 2002).

[8] Reference is made to general recommendation No. 19, in addition to communication No. 25/2010, *M.P.M. v. Canada*, decision of 24 February 2012, para. 4.2; and communication No. 26/2010, *Guadalupe Herrera Rivera v. Canada*, decision of 18 October 2011, para. 4.4. In those communications, Canada argued, in particular, that the Convention did not deal, directly or indirectly, with removal to torture or other serious threats to life and the security of the person.

[9] Reference is made to communication No. 10/2005, *N.S.F. v. the United Kingdom of Great Britain and Northern Ireland*, decision of 30 May 2007; and communication No. 15/2007, *Zhen Zhen Zheng v. the Netherlands*, decision of 27 October 2008.

[10] Reference is made to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1951 Convention relating to the Status of Refugees and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[11] Reference is made to communication No. 11/2006, *Constance Ragan Salgado v. United Kingdom of Great Britain and Northern Ireland*, decision of 22 January 2007.

those instruments may be triggered even if the threat emanates from persons who are not public officials. It should be established, however, that the risk is real and that the authorities in the country of origin are unable to obviate it by providing appropriate protection.

4.6 With reference to the above, the State party explains that, by virtue of its policy on aliens, the obligation to protect extends only to cases in which it can be established that an asylum seeker is unable to receive protection from the authorities in his or her country of origin. A determining factor in this regard is whether such authorities take appropriate measures, such as establishing an effective legal system to investigate, prosecute and sanction those responsible. The legal system is effective if it can offer the necessary protection as cases arise. The effectiveness of protection is determined through an assessment of measures taken. Protection is effective if it reasonably protects from the threat, which does not imply ruling out all possible risk. Furthermore, effective protection does not have to be deemed permanent at the time of assessment: protection for the immediately foreseeable future is sufficient.[12] It is also relevant whether the alien has access to such protection.[13] Aliens are expected to apply to a higher authority, if necessary. Should local authorities fail to offer adequate protection, victims are, in principle, expected to turn to the central government authorities.[14]

4.7 The State party further explains that it is up to the alien to demonstrate, in the first place, that no effective protection can be offered in the country of origin. The burden of proof may shift to the authorities of the Netherlands, however, if the alien's individual situation and the general situation in the country of origin so warrant. The division of the burden of proof is therefore based on the alien's individual circumstances, which are assessed partly in the light of the general situation in the country of origin. Should general sources of information about the country show that protection is generally unavailable or that requesting protection is pointless or even dangerous, the alien is not to be expected to demonstrate that protection is unavailable in his or her individual situation.

4.8 In the light of that policy, the State party emphasizes that the general situation in Mongolia is not such that asylum seekers are automatically considered refugees.[15] The author must therefore demonstrate that the facts and her individual circumstances justify her fear of persecution within the meaning of the 1951 Convention relating to the Status of Refugees. The State party is of the view, as confirmed by the national courts, that the author has failed to do so.

4.9 In this regard, the State party notes that legislation relating to domestic violence was enacted and a national centre against violence established in Mongolia between 2004 and 2005. In 2007, the Committee recognized the efforts by Mongolia to combat and prevent domestic violence and violence against women. At the same time, the Committee expressed concern that the incidence of domestic violence remained high and that it continued to be seen as a private matter. The Committee therefore called upon Mongolia to ensure that women victims of violence had

[12] Reference is made to article C4/2.2.4 of the Aliens Act (2000) implementation guidelines.

[13] Reference is made to article 3.37c of the Aliens Regulation (2000).

[14] Reference is made to article C4/2.2.3 of the Aliens Act (2000) implementation guidelines.

[15] Reference is made to the country report of 12 January 2010 by the Ministry of Foreign Affairs of the Netherlands, available in Dutch from www.rijksoverheid.nl/documenten-en-publicaties/ambtsberichten/2010/01/14/mongolie-2010-01-12.html.

immediate means of redress and protection, including protection orders, access to safe shelters and medical and rehabilitation assistance.[16] At the same time, the State party notes that, over the past few years, a number of criminal convictions in cases of violence against women have been recorded.[17] According to Caritas International, special forms of support are available to women in vulnerable situations. For example, the Mongolian Gender Equality Centre provides protection and reintegration services for victims of human rights trafficking and voluntary returnees. The Centre for Child and Women Protection assists voluntary returnees from the European Union.[18] Furthermore, persons can, in principle, ask the authorities for protection from corrupt officials.[19]

4.10 The State party further notes that the above-mentioned country information and the author's submissions were taken into account in the asylum proceedings. That the authorities of the Netherlands and the author drew different conclusions therefrom does not imply that the authorities failed to include them in their assessment.

4.11 The State party acknowledges that, in the light of the information provided above, domestic violence is common in Mongolia and that the author's allegations of abuse by Mr. L. were considered credible[20] by the authorities of the Netherlands. The State party finds, however, that the author failed to demonstrate that she was unable to apply to the Mongolian authorities for effective protection from Mr. L.'s conduct. It states that it follows from the information available that there is no impunity for perpetrators of (sexual) violence against women, as is also demonstrated by the convictions recorded in recent years. According to the country report of the Ministry of Foreign Affairs of the Netherlands, the Mongolian police are required to investigate reports of domestic violence and to offer protection to victims. In addition, Mongolian law provides for sanctions against offenders, who

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[16] Reference is made to the concluding observations of the Committee on the combined fifth, sixth and seventh periodic report of Mongolia (CEDAW/C/MNG/CO/7).

[17] Reference is made to the country report of 12 January 2010 by the Ministry of Foreign Affairs of the Netherlands, available from www.rijksoverheid.nl/documenten-en-publicaties/ambtsberichten/2010/01/14/mongolie-2010-01-12.html. Reference is also made to the 2011 country report on human rights practices in Mongolia, prepared by the Department of State of the United States of America, available from www.state.gov/documents/organization/186502.pdf. The State party notes that these reports show that violence against women is a serious problem in Mongolia, especially in low-income rural families. In addition, social and cultural norms and police procedures make it difficult for victims to file criminal complaints.

[18] Reference is made to the Caritas International country sheet on Mongolia of September 2010, available from www.reintegrationcaritas.be/fileadmin/user_upload/Fichiers/CS/Mongolia/COUNTRY_SHEET_MONGOLIA_ENGLISH_VERSIONx.pdf.

[19] Reference is made to the country report of 12 January 2010 by the Ministry of Foreign Affairs of the Netherlands, available from www.rijksoverheid.nl/documenten-en-publicaties/ambtsberichten/2010/01/14/mongolie-2010-01-12.html; the 2008 and 2010 country reports on human rights practices in Mongolia, prepared by the United States Department of State, available from www.state.gov/j/drl/rls/hrrpt/2008/eap/119049.htm and 154394.htm, respectively; a Freedom House report of 2008 on Mongolia, available from www.freedomhouse.org/report/freedom-world/2008/mongolia; and an Amnesty International report of 2008 on Mongolia, available from www.amnesty.org/en/region/mongolia/report-2008.

[20] The State party's submission reads as follows: "In the domestic procedure, the Dutch authorities considered the author's allegations of abuse by Mr. L. to be credible. However, in the Government's view, the author failed to satisfactorily demonstrate that she could not apply to the Mongolian authorities for effective protection from the conduct of her former employer."

are predominantly male, such as exclusion and non-molestation orders or mandatory behaviour change training.

4.12 The State party challenges the author's argument that there would be no point in seeking protection if she were to return to Mongolia. First, the State party notes that it remains unclear how the Mongolian authorities handled the author's criminal complaints. She adduced no evidence that they had not followed up on them or opened an investigation. Further to her first complaint, the police held Mr. L. for 72 hours. Further to her second complaint, the police recorded her submissions, took pictures of her injuries and questioned Mr. L. Such actions do not suggest that the Mongolian authorities are unwilling to protect her. Furthermore, the author is reasonably expected to have at least asked the police about the status of her complaints. The mere fact that the police contacted Mr. L. further to her complaint does not suffice to prove that they accepted money to keep him informed of the course of the investigation or that the authorities did not take her complaint seriously. In addition, the author's allegation that Mr. L. bribed the police is not supported by evidence. The author's mere suspicion does not warrant the conclusion that she would be unable to obtain official protection in Mongolia.

4.13 Second, the State party notes that the author could have complained to a higher authority in Mongolia. She did not explain why she failed to do so before leaving her country of origin and seeking protection in the Netherlands. Neither did she seek help from other organizations in Mongolia, such as the National Centre against Violence, which has five shelters for victims of domestic violence and offers legal assistance to them.[21]

4.14 The State party therefore considers that the author's communication is unfounded because she has failed to demonstrate that the Mongolian authorities are unwilling or unable to protect her. It states that general recommendation No. 19 does not require that States parties grant residence permits to victims of domestic violence. The denial of the author's asylum request does not disclose a violation of articles 1, 2, 3 and 6 of the Convention.

Author's comments on the State party's submission

5.1 On 23 October 2012, the author commented on the State party's observations on admissibility and merits. The author rejects the State party's argument that she should have complained to the Mongolian authorities because Mongolia is also a State party to the Convention. With reference to general comment No. 15 of the Human Rights Committee,[22] the author argues that the Convention applies to all individuals within the territory of the Netherlands, including migrant and refugee women. She therefore has the right to file her complaint in the Netherlands.

5.2 The author further challenges the State party's argument that she failed to bring the allegation of sex-based discrimination before the authorities and courts of

[21] Reference is made to the country report of 12 January 2010 by the Ministry of Foreign Affairs of the Netherlands available from www.rijksoverheid.nl/documenten-en-publicaties/ambtsberichten/2010/01/14/mongolie-2010-01-12.html.

[22] Paragraph 1 of general comment No. 15 of the Human Rights Committee reads:

Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to 'all individuals within its territory and subject to its jurisdiction' (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.

the Netherlands that were processing her asylum request. She submits that she clearly stated that she had been a victim of sex-based discrimination in Mongolia, in particular sexual slavery and domestic violence by her former employer and sexual and physical abuse in the workplace. She also stated that the Mongolian authorities had not provided effective protection to her, her two complaints to the police notwithstanding. The State party did not dispute that her statements were credible. Furthermore, the author provided the State party and its national courts with ample information about the general situation of women in Mongolia to show widespread discrimination against women and impunity with regard to incidents of domestic violence and trafficking in women. In so doing, she sought to demonstrate that her situation was not an isolated incident but followed the pattern of structural discrimination against women in Mongolia. The author further notes that it was unnecessary for her to refer to the Convention in the national proceedings. With reference to general recommendation No. 19, she reiterates that violence against women falls with the scope of article 1 of the Convention. In addition, there is no other national procedure or court in the Netherlands to which she could complain of the treatment to which she was subjected in Mongolia. The author therefore contends that she raised the sex-based discrimination claim in substance in the State party and that her communication should be declared admissible.

5.3 The author also refutes the State party's argument that she could have sought protection under other instruments, such as the Convention against Torture or the European Convention for the Protection of Human Rights and Fundamental Freedoms, because the Convention should not overlap with other international and European human rights instruments. She emphasizes that, insofar as such instruments are designed to protect a person against abuse, some overlap is to be expected. She requested the State party to protect her (and her son) against abuse and discriminatory acts in Mongolia. She states that a well-founded "fear of expulsion" to the country of origin might be a reason for granting asylum and thus ensuring effective protection under the Convention. She refers to the Committee's concluding observations on the second and third periodic reports of the Netherlands[23] and general comment No. 15 of the Human Rights Committee.[24] The author reiterates that her communication should be declared admissible.

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[23] The author refers to the advance unedited version, available from www.un.org/womenwatch/daw/cedaw/cedaw25/TheNetherlands_Final.htm. The paragraphs referred to by the author read as follows (the author underlined the text of paragraph 28):

27. The Committee is concerned about non-European women who have been trafficked who fear expulsion to their countries of origin and who might lack the effective protection of their Government on their return.

28. The Committee urges the Government of the Kingdom of the Netherlands to ensure that trafficked women are provided with full protection in their countries of origin or grant them asylum/refugee status.

[24] Reference is made to paragraph 5 of general comment No. 15 of the Human Rights Committee, which reads as follows (the author underlined the final two sentences):

The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

5.4 With regard to the merits of the case, the author disagrees with the State party's arguments that she failed to demonstrate that she could not seek effective protection from the Mongolian authorities; that her submission of two criminal complaints did not suffice to conclude that there was no point in seeking protection upon her return to Mongolia; and that she could have sought protection from a higher authority.

5.5 The author points out that the authorities of the Netherlands found her statements credible and that the facts of the case were not disputed by the State party. The authorities of the Netherlands therefore had to assess the case in the light of the situation in Mongolia. Insofar as the State party claims that the author alleges discrimination by a person rather than the authorities in her country of origin, the author submits that discrimination by a person falls within the scope of the Convention.[25]

5.6 Furthermore, the author recalls that the State party acknowledges that domestic violence against women is common in Mongolia. The Committee also expressed concern about a high incidence of domestic violence there, which continued to be seen a private matter; about a very low prosecution rate under the Law on Fighting against Domestic Violence (20 cases prosecuted since its enactment); and about the failure of Mongolia to criminalize marital rape.[26] Although the State party, in order to show that the Mongolian authorities will offer her protection upon return, asserts that there have been a number of convictions in cases of violence against women, the author considers that the sources quoted do not demonstrate that the situation has improved. Conversely, the incidence of violence against women remains high, perpetrators enjoy impunity and effective remedies are unavailable.

5.7 For example, the Department of State of the United States of America indicated in a report referred to by the State party in its observations[27] that, according to non-governmental organizations, many rape cases were underreported; the police prosecuted only a small number of such cases owing to lack of evidence or funding; and victims were discouraged from reporting owing to social stigma, stress or the public character of the proceedings. Domestic violence remained a serious problem, in particular with regard to women from low-income rural families, and was viewed as an internal family matter in which the police were reluctant to intervene. There were no domestic violence convictions because there was no specific implementing provision in the Criminal Code.[28] The findings are confirmed

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[25] Reference is made to paragraph 9 of general recommendation No. 19, which reads:

It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2 (e), 2 (f) and 5). For example, under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

[26] Reference is made to paragraph 25 of the Committee's concluding observations on the combined fifth, sixth and seventh periodic report of Mongolia (CEDAW/C/MNG/CO/7).

[27] See para. 4.9.

[28] With reference to the country report on human rights practices in Mongolia issued by the United States Department of State in 2011 (see footnote 20), the author submits that, in 2010, there were 237 rape cases, in which 336 persons were convicted, according to the research centre of the Supreme Court. She underlines, however, that, according to non-governmental sources, police referred only a small number of rape cases for prosecution, generally invoking insufficient evidence. In addition, non-governmental organizations alleged that many rapes were not reported and claimed that police and judicial procedures were stressful to victims and tended to discourage reporting, as did social stigma.

in the Caritas International report,[29] according to which, in 2007, 1 in 3 women were estimated to be subject to domestic violence and 1 in 10 women to be battered. Furthermore, there were no laws against sexual harassment and, according to a survey, 1 in 2 employed women under 35 years of age identified herself as a victim of sexual harassment in the workplace.

5.8 The author stresses that effective protection from the Mongolian authorities was unavailable in her case. That the police investigated and questioned Mr. L. cannot be considered to be effective protection under the Convention. The police followed through neither of her complaints and offered no effective protection to her because they did not prosecute Mr. L. and did not even seek to protect her from further abuse. The author refers to paragraph 24 of general recommendation No. 19, according to which State parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act, and provide effective complaints procedures and remedies, including compensation, to victims. She contends to have provided the authorities and courts of the Netherlands with ample information to show that women are generally not protected against discrimination and violence in Mongolia.

5.9 The author further submits that the State party had to take into consideration that corruption is widespread in Mongolia. She recalls that Mr. L. is a wealthy person with strong connections to the Mongolian elite, including high-profile politicians. He told the author that the police would not prosecute him because he had bribed them. The author refers to the country report of 12 January 2010 by the Ministry of Foreign Affairs of the Netherlands, which states that the public do not generally have trust in the Mongolian legal system; that 85 per cent believe that the courts favour rich people and big companies; that corruption remains a significant problem, including in the legal system; and that the police are among the most corrupt. In the author's view, it transpires therefrom that Mr. L. did indeed bribe the police to stop the investigation into the case, which would render it difficult for her to seek protection from a higher authority or upon her return to Mongolia, given that the evidence in her case would most probably have been destroyed. The author further notes that, even if Mr. L. came before the courts, his money and connections would protect him from conviction. She therefore states that she was unlikely to receive protection from the Mongolian authorities before she left the country and that it is highly unlikely that such protection would be provided were she to return to Mongolia.

5.10 The author further challenges the State party's argument that Mongolian non-governmental organizations, such as the National Centre against Violence, could provide effective protection to her. First, the obligation to provide effective protection engages States and not private organizations. Second, non-governmental organizations will not be in a position to offer effective protection to her because most do not specialize in protecting victims against abuse and provide only counselling and reintegration assistance.[30] In any event, protection from

[29] See para. 4.9.

[30] Reference is made to the Caritas International report (see para. 4.9 and footnote 21), according to which the National Centre against Violence provides legal and psychological counselling to women who have experienced violence, in particular domestic violence, and provides women and children with sanctuary at shelters and transition houses. There is no special organization or centre providing legal, economic and psychological services for returnees. Returnees can, however, acquire information from several non-governmental organizations providing other services, such as the Mongolian Gender Equality Centre (protection and reintegration assistance to victims of human trafficking and voluntary returnees) and the Centre for Child and Women Protection (reintegration assistance for voluntary returnees from the European Union).

non-governmental organizations would be extremely limited. In particular, as to the State party's argument that the National Centre has five shelters for victims of domestic violence, the author points out that only a dozen women can live there at a time, whereas the number of women in need of shelter is considerably higher. Furthermore, shelters can offer only protection of limited duration, which is not effective because the women are exposed to danger once they leave.[31]

5.11 The author therefore reiterates that she was a victim of gender-based discrimination in Mongolia. She states that, in the light of her individual circumstances and the situation in Mongolia, she was unable to receive effective protection in her country of origin and would be highly unlikely to obtain it were she to return there. The author stresses that no alternative effective protection is available to her. Consequently, the State party's denial of her asylum application amounts to a violation of the Convention.

Issues and proceedings before the Committee concerning admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66, the Committee may examine the admissibility of the communication separately from the merits.

6.2 In accordance with article 4 (2)(a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the author's claim that, by denying her asylum application, the State party failed to protect her, in violation of articles 1, 2 (e), 3 and 6 of the Convention, from sex-based violence, sexual slavery and physical abuse by Mr. L., her former employer in Mongolia. The Committee further takes note of the State party's allegation that the author failed to raise the sex-based discrimination claim in substance in the course of the asylum proceedings before the authorities or courts of the Netherlands, given that she argued only that her removal would be in contravention of the non-refoulement principle. The Committee recalls that, under article 4 (1) of the Optional Protocol, authors must use all available domestic remedies. It also recalls its jurisprudence, according to which the author must have raised in substance at the domestic level the claim that she wishes to

[31] Reference is made to the 2010 country report on human rights practices in Mongolia, prepared by the United States Department of State, which reads as follows (the author underlined the first, fourth and fifth sentences):

The NCAV reported that of 18 clients requesting restraining orders, only two of the requests were granted. Moreover, the law fails to assign responsibility to particular agencies to execute restraining orders. The Mongolian Women's Legal Association reported that, as a result, restraining orders were poorly monitored and enforced. The law states restraining orders can be in effect only as long as the victims are in a shelter, thus exposing them to danger upon their release.

The NCAV stated that in the first six months of the year, it provided temporary shelter to 237 persons at its six locations and provided psychological counselling to more than 1,300 individuals. The NCAV launched domestic violence prevention campaigns without governmental support. State and local governments financially supported the NCAV in providing services to domestic violence victims. In total the Ministry of Social Welfare and Labor (MSWL) provided 14.3 million tugrik ($10,270) in the first nine months of the year to assist victims of domestic violence.

bring before the Committee[32] so as to provide the domestic authorities and/or courts with an opportunity to deal with such a claim.[33]

6.4 The Committee notes the State party's contention that the author limited her complaint to a violation of the non-refoulement principle and did not invoke sex-based discrimination. The Committee recalls that the essence of the non-refoulement principle is that a State shall not return persons to a territory where they may be exposed to persecution, including gender-related forms and grounds of persecution. It also recalls that the non-refoulement principle constitutes an essential component of asylum and international refugee protection. It recalls its jurisprudence, according to which article 2 (d) of the Convention encompasses the obligation of States parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party.[34] The Committee further recalls that gender-based violence is a form of discrimination against women and includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.[35] In the circumstances, even assuming that the author did not specifically allege sex-related discrimination before the national authorities, the Committee considers that sex-based violence, sexual slavery and physical abuse, directed against her as a woman, were raised by her when seeking asylum and that the competent authorities had thus an opportunity to examine those claims. The Committee observes that it remains unchallenged by the State party that there has been no other procedure available to the author domestically where she could raise the sex-discrimination claim in substance. The Committee considers, therefore, that it is not precluded under article 4 (1) of the Optional Protocol from examining the present communication.

6.5 The Committee further takes note of the State party's arguments that the communication should be declared inadmissible *ratione materiae* because the author seeks to expand the protection offered by the Convention in an extraterritorial manner and widen its ambit to include the non-refoulement principle; that the State party cannot be held liable for violations, real or alleged, of the Convention by another State party; and that the Committee lacks jurisdiction over the alleged violations with regard to the Netherlands.

6.6 Having regard to the Committee's definition of gender-based violence[35] and its jurisprudence relating to the applicability of the Convention *ratione materiae, ratione loci* and in an extraterritorial manner,[34] the Committee considers itself competent to examine the communication. In view of the foregoing, the Committee has to determine, for purposes of admissibility under article 4 (2)(c) of the Optional Protocol, whether the author has made a prima facie case by sufficiently substantiating her allegations of violation of articles 1, 2 (e), 3 and 6 of the Convention by the State party. The Committee also has to assess whether the author has provided adequate information as to whether she would be exposed to a real,

[32] See communication No. 8/2005, *Kayhan v. Turkey*, decision of 27 January 2006, para. 7.7.

[33] See communication No. 10/2005, *N.S.F. v. United Kingdom of Great Britain and Northern Ireland*, decision of 30 May 2007, para. 7.3.

[34] See, for example, communication No. 33/2011, *M.N.N. v. Denmark*, decision of 15 July 2013, paras. 8.5-8.10; and communication No. 35/2011, *M.E.N. v. Denmark*, decision of 26 July 2013, paras. 8.4-8.9.

[35] See paragraph 6 of general recommendation No. 19.

personal and foreseeable risk of serious forms of gender-based violence were she to return to Mongolia.[36]

6.7 The Committee notes that the author has provided no explanation as to why and how she considers that her rights under articles 3 and 6 of the Convention, which deal with the advancement of human rights of women, exploitation of prostitution and trafficking in women, have been violated by the State party's denial of her asylum application. In the absence of any other pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate the claims under articles 3 and 6 of the Convention for purposes of admissibility.

6.8 With regard to the assessment of the risk of serious forms of gender-based violence for the author if returned to Mongolia, under articles 1 and 2 (e) of the Convention, the Committee notes, first, that the author merely states that she fears that the Mongolian authorities would fail to protect her against Mr. L., but provides no further explanation. Neither has she explained why Mr. L. would remain a real threat to her, five years after the alleged events occurred (between December 2008 and June 2009). In addition, the author has not explained how, in the past, the Mongolian authorities have failed to protect her in her personal circumstances or shown that there is a real risk that these authorities would be unable to provide her with appropriate protection upon return.

6.9 Furthermore, the Committee takes note of the fact that the author has not explained why she did not follow up on her complaints with the police during the three months of her absence from Mr. L.'s house between December 2008 and June 2009. Neither has she explained why she did not complain to the Mongolian prosecuting authorities or courts during the same period. The Committee further notes that the author left the country in June 2009, i.e. six months from the time of her first complaint to the police (December 2008). On the other hand, the Committee observes that it does not follow from the material on file that the Mongolian authorities had in fact acted in bad faith or had failed to react promptly to the author's complaints. In this context, the Committee also observes that Mongolia is a State party to the Convention and to the Optional Protocol thereto and, as such, is bound by their provisions.

6.10 In these circumstances, and in the absence of any other pertinent information before it, the Committee considers that the facts as presented do not permit a conclusion to be reached that there is no effective legal system in Mongolia capable of establishing, prosecuting and sanctioning Mr. L. and, especially, that the author's individual circumstances justify the risk of persecution by Mr. L. and the lack of protection against such a risk, in the event of return to her country of origin. The Committee also concludes that, for purposes of admissibility, the author has failed to substantiate her claim under articles 1 and 2 (e) of the Convention.

6.11 In the light of the above considerations, taken as a whole, and in the absence of any other pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, her claim that the denial of her asylum application by the State party would expose her to a personal and foreseeable risk of serious forms of gender-based violence if returned to Mongolia and that the Mongolian authorities have failed, or would fail, to provide

[36] See, for example, communication No. 33/2011, *M.N.N. v. Denmark*, para. 8.10.

her with effective protection from such forms of violence. Accordingly, the Committee concludes that the communication is inadmissible under article 4 (2)(c) of the Optional Protocol.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (2)(c) of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[Adopted in Arabic, Chinese, English, French, Russian and Spanish, the English text being the original version.]